UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1993/SR.35
22 March 1993

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Forty-ninth session

SUMMARY RECORD OF THE 35th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 23 February 1993, at 7 p.m.

Chairman: Mr. Flinterman (Netherlands)

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GE.93-11177 (E)

The meeting was called to order at 7.15 p.m.

SITUATION OF HUMAN RIGHTS IN THE TERRITORY OF THE FORMER YUGOSLAVIA (agenda item 27) (continued) (E/CN.4/1993/L.16 and L.21)

1. Mr. PORTALES (Chile), speaking in explanation of vote, said that his delegation had been unable to support the amendment proposed by the delegation of Malaysia to draft resolution E/CN.4/1993/L.16, and had specific reservations with regard to paragraph 8 of that resolution.

2. Mr. NOVOA (Cuba), said that his delegation had participated in the consensus on draft resolutions E/CN.4/1993/L.16 and L.21, but could not agree with paragraphs 29 and 32 of the latter resolution, which clearly exceeded the mandate of the Commission and were at variance with Articles 62 and 65 of the Charter of the United Nations. The Commission should take care to establish its priorities, on an impartial basis, in regard to human rights.

3. Mr. SABOIA (Brazil) said that his delegation had participated in the consensus on draft resolution E/CN.4/1993/L.16, which had correctly expressed the views of the international community on the current situation in Yugoslavia. There was clearly a need for an ad hoc international criminal tribunal to bring to justice those responsible for violations of human rights in the former Yugoslavia. Paragraph 29 of the draft resolution E/CN.4/1993/L.16 duly reflected his delegation's concern.

4. Mr. FAROUQUE (Sri Lanka) said that his delegation had voted in favour of draft resoluton E/CN.4/1993/L.16, but reserved its position with regard to paragraph 29 of that resolution, which might encroach upon the prerogatives of the Security Council.

5. Mr. Moon Bong JOO (Republic of Korea) said that his delegation greatly regretted the fact that it had been unable to support the Malaysian amendment to paragraph 8 of draft resolution E/CN.4/1993/L.16, due to a failure to arrive at a compromise solution, despite extended discussions.

6. The CHAIRMAN said that the Commission had concluded its consideration of agenda item 27.

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

(a) TORTURE AND OTHER, CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT;

(b) STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT;

(c) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES;

(d) QUESTION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (agenda item 10) (continued) (E/CN.4/1993/4, 20, 21, 22, 23 and Add.1-2, 24, 25 and Add.1, 26-28 and 86; E/CN.4/1993/NGO/7, 9, 10, 18-20 and 22; E/CN.4/1992/17 and Add.1; E/CN.4/1992/18 and Add.1; E/CN.4/1992/20; E/CN.4/Sub.2/1992/9 and Add.1; E/CN.4/Sub.2/1992/17, 19, 22, 23/Rev.1, 24 and Add.1-3; A/47/662; A/RES/47/109).

7. Mr. LUNA (International Indian Treaty Council) said that while the Government of the United States expressed support, albeit selectively, for the freedom of political prisoners outside the United States, it vociferously denied the existence of political prisoners at home, claiming that those detained were terrorists or criminals. Many of those in jail on the grounds of demanding social and racial equality had been tried on conspiracy charges, which relied on political affiliation and beliefs as evidence of criminality.

8. The judicial system in the United States continued to be used in a harsh and discriminatory manner against peoples struggling for justice and self-determination. Persons charged with politically motiviated offences were being held in preventive detention under a statute which designated them as being "dangerous to the community", thus enabling the Government to jail its opponents for years without the right to bail, and even without trial. Sentencing in the United States for political prisoners was grossly disproportionate to that applied to members of right-wing and racist organizations.

9. Conditions in jails were exceptionally harsh and their intent was to destroy prisoners psychologically and physically. Native Americans in particular were denied the right to engage in their religious practices. Recent Supreme Court decisions had made it almost impossible for prisoners to seek protection under the First Amendment to the Constitution.

10. The International Indian Treaty Council was extremely concerned at the application in the United States of capital punishment. United States human rights watch groups had concluded that capital punishment was applied in a racist manner. Forty-five American Indians were currently under sentence of death, and coloured people were executed more frequently than whites. Poverty was the common thread in such cases. In that connection, it was to be noted that the Supreme Court had given the States authority to execute a person claiming to be innocent if new evidence of innocence was not presented within 30 days of sentencing. A dissenting Justice of the Supreme Court had called that decison "close to simple murder".

11. Mr. MANNA (International Federation of Human Rights - IFHR) said that the IFHR and its affiliate, the Organization of Committees for the Defence of Democratic Freedoms and Human Rights in Syria (CDF), considered that the continuation of a state of emergency in the Syrian Arab Republic for 30 years was one of the main causes of the persistent massive violations of human rights in the administration of justice in that country. Over that period, more than 42,000 persons had been imprisoned merely for expressing an opinion, and the whereabouts of another 3,000 who had disappeared were unknown. The exact number killed in the Hama massacre of 1982 or summarily executed in the period 1979-1982 had still to be determined. Systematic recourse to

extrajudicial procedures such as de jure and de facto special courts had led to a situation of "judicial underdevelopment" and a collapse of the rule of law. Currently, more than 450 prisoners of conscience were being tried by such courts. His organization's written statement contained in document E/CN.4/1993/NGO/9 contained full details of the situation regarding prisoners of conscience, arbitrary detention and the state of emergency in Syria.

12. The IFHR and the CDF welcomed the rumours that a number of persons who had been detained without trial for at least 21 years, who had served their full sentences by 1985 or who were detained in vio lation of the Standard Minimum Rules were shortly to be released. However, intervention by the Commission was also necessary. He thus called upon the Commission to support any steps taken to secure the release of prisoners of conscience, abolition of the special courts and an end to the state of exception.

13. In Lebanon, the IFHR and its affiliated organization, the Lebanese League of Human Rights, were closely monitoring the human rights situation, and, in particular, population movements within the country and the fate of Lebanese hostages and prisoners held in Syria and Israel. While the Lebanese Government had inherited certain problems, that did not absolve it of responsibility for fraud during the recent legislative elections. Both the IFHR and the Lebanese League had called for the immediate release of prisoners of conscience and the introduction of measures to ensure the independence of the judiciary.

14. In Tunisia, despite cooperation on the part of the authorities, the human rights situation in the administration of justice was still a matter for great concern. In addition to persistent use of torture, political trials contradicting the principle of independence of the judiciary and culminating in the handing down of severe sentences were also to be denounced. In its statement to the Sub-Commission in August 1992, his organization had expressed the fear that a new law on the right of association would be used to target its affiliate, the Tunisian Human Rights League. Since that session, the League had ceased its activities, and the new law had recently been invoked against an organization for the defence of prisoners of conscience. The IFHR thus called for the new law to be brought into line with the provisions of international human rights instruments ratified by Tunisia.

15. Ms. LI (International Federation of Human Rights) said that the IFHR was extremely concerned at the fact that tens of thousands of persons were arbitrarily detained by the Government of China each year, merely for exercising their basic human rights. As document E/CN.4/1993/NGO/19 made clear, various administrative procedures had been used by the Government of China as a substitute for a formal judicial process. Those procedures were not supervised by independent judicial bodies, thereby increasing the likelihood of arbitrary arrest and detention. In principle, they provided for the detention, investigation and sanctioning of non-criminals; in practice, they were used to penalize individuals for the exercise of internationally protected rights to free expression. Under a system known as "shelter and investigation", persons could be held without charge for more than a year on the sole authority of the police. The procedures also authorized "re-education through labour" - a method of detaining people not legally considered criminals, who could be sentenced to up to three years in a labour

camp without benefit of public trial or right to counsel, thereby bypassing provisions of the Chinese Constitution governing arrest and detention as well as the Chinese Code of Criminal Procedure.

16. Prisoners of conscience could be denied the right to adequate time and facilities to prepare their defence, and also the rights to presumption of innocence, to cross-examine prosecution witnesses; or to call witnesses for the defence. In such cases, the authorities generally ensured that the verdict was predetermined before the trial took place. Defence counsel were frequently pressurized into submitting statements to the authorities for approval, and were instructed not to enter pleas of not guilty. Pre-trial detention for political prisoners often lasted several months, during which time they were denied access to lawyers or family members. Prisoners were denied the right to choose their own lawyer; and defence counsel who proved too vigilant in defending prisoners of conscience had been stripped of their licence to practise.

17. China had ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1988, but since then the incidence of torture in Chinese jails had increased. Major factors facilitating torture were a lack of impartial investigations into torture allegations; impunity; the total reliance placed on confessions by the judicial process; lack of supervision of the police authorities; lack of proper complaint procedures; and the fact that prisoners were held incommunicado for months on end, at the mercy of their gaolers. Prisoners were tortured without the knowledge of the public, and while procurators were aware that torture was practised, they tended to turn a blind eye.

18. Mr. BALIAN (Human Rights Advocates) said that hostage-taking was a grave breach of the Geneva Convention of 12 August 1949 relative to the Protection of Civilian Persons in Time of War as well as the 1977 Protocols thereto. When hostages disappeared, or were executed, tortured or subjected to other cruel, inhuman or degrading treatment or punishment, the initial breach of humanitarian law was further compounded by gross violations of human rights from which it often could not be considered separately. As the thematic rapporteurs had indicated, those violations had increased in number in the course of the past year. They often started with the taking of hostages from areas far removed from armed conflicts. Such crimes reached alarming levels during times of civil strife, and might be committed by government troops, security personnel, irregular armed units, or individuals. Often, the victim was chosen solely on the basis of his or her national ethnic origin, membership of a minority group or race.

19. Baroness Cox of the United Kingdom had taken part in a humanitarian mission in January 1993 to the Trans-Caucasus were she had investigated the problem of hostages. She had referred to the case of an elderly Armenian woman who had been taken hostage, tortured, raped and humiliated before being ransomed. The taking of such a hostage and her treatment could not be justified in any circumstances. Unfortunately, the instance was by no means an isolated one, since his organization was in possession of a list of at least 240 Armenian civilians from Nagorny-Karabakh held hostage in Azerbaijan, some of them since May 1991. As for the few citizens of Azerbaijan of Armenian origin who remained in Baku after the 1991 anti-Armenian massacre, if

their Armenian origin was discovered they were held hostage until they could be exchanged with Azerbaijani prisoners of war. Citizens of Armenia had also been kidnapped from Armenia and held hostage in Azerbaijan; there was at least one example of a hostage being killed because the ransom demanded could not be paid. Regrettably, when the Azerbaijani Government responded with impunity to that type of action, Armenians resorted to reciprocation and in their turn kidnapped Azeris, holding them hostage as a guarantee against members of their family held in Azerbaijan or in order to avenge the disappearance or summary execution of their kin. The problem was further complicated when Armenian minority citizens of neighbouring Georgia were kidnapped by Azerbaijani armed units and held in Azerbaijan as hostages. Some of those kidnappings had been witnessed by ICRC representatives.

20. Regardless of the causes of the Nagorny-Karabakh conflict and the merits of the Armenians' quest for self-determination, the practice of hostage-taking, and the torture, summary execution and disappearance of hostages, could not be justified, nor could it be tolerated by the international community.

21. For the past five years, Human Rights Advocates had reported to the Commission on the existence of a consistent pattern of gross violations of human rights and humanitarian law in Azerbaijan. The fact that the Commission had failed to express concern about those gross violations could only serve to encourage the escalation of violence. In order to put an end to the odious practice of hostage-taking, the international community, and the Commission in particular, must give a clear message that it would not tolerate the practice.

22. Human Rights Advocates urged the Commission to appeal in the strongest terms to the parties concerned to release all hostages immediately to end hostage-taking and further urged it to examine the possibility of a joint investigation by the thematic rapporteurs and working groups of the allegations it had made.

23. Mr. Moon Bong JOO (Republic of Korea) said that despite the international community's commitment to eliminating the atrocious human rights violations constituted by torture and disappearances, it had still not come close to achieving that goal. His delegation wished to express its appreciation to Mr. Kooijmans, the Special Rapporteur on torture for his contribution to the work of the Commission; since 1985 he had not only provided valuable suggestions for the eradication of torture but had also helped to prevent it through timely appeals to the Governments concerned. His role exemplified the usefulness of the thematic procedures and it was encouraging to note that an increasing number of Governments were willing to cooperate with him. A further promising approach was to be found in Commission resolution 1992/32, which pointed out that the training programmes for law enforcement and security personnel of the United Nations programme of advisory services offered possibilities in that connection.

24. It was important to keep the issue of torture on the agenda, since public knowledge of serious human rights abuses was one of the surest means of encouraging effective international cooperation, along with the acceptance of the international prohibition against torture.

25. With regard to the related issue of enforced or involuntary disappearances, his delegation believed that the problem would continue unabated until all Governments were absolutely determined not to tolerate it. Individual Governments must increase their efforts to punish those responsible, even when the guilty were themselves government employees. His delegation welcomed the adoption by consensus at the forty-seventh session of the General Assembly of the Declaration on the Protection of All Persons from Enforced Disappearances.

26. His delegation remained deeply concerned that staff members from the United Nations and related organizations had been detained, imprisoned or reported missing, and would support any initiatives by the Commission to examine the human rights situation of those staff members and their families, as well as measures taken or contemplated to protect their basic rights.

27. In the Commission's efforts to resolve human rights problems, the best possible use should be made of special rapporteurs, experts and staff; the task would continue to be enormous and financial resources were already strained. His delegation hoped that the Commission would provide concrete recommendations to facilitate discussion at the World Conference on Human Rights which would deal with the international human rights mechanisms, including thematic procedures.

28. Mr. ALBAN PERALTA (Andean Commission of Jurists), referring to enforced or involuntary disappearances in the Andean region, said that in Colombia there were daily reports of enforced disappearances of persons, while in Peru, which was one of the countries with the largest number of enforced disappearances in the world, in 1992, 268 persons had been reported as having disappeared. Enforced disappearances were also occurring with increasing frequency in Venezuela. While the phenomenon occurred even under constitutional regimes, the characteristics of the Andean societies, which were at the basis of those violations, posed the latent danger, that in certain circumstances, the phenomenon might become recurrent in other countries of the region whose weak civil and political institutions had encouraged the emergence of dissident, subversive or terrorist groups leading to a response from the State centred around repression by the military and the police.

29. The phenomenon of the detention and disappearance of persons was linked to other kinds of human rights violations which were "traditional" in Andean societies, such as arbitrary detention, torture or attacks on personal integrity. The phenomenon was fostered by those practices and its development could therefore be said to be the exacerbation of violations to which the population was permanently exposed. Consequently, policies for the prevention of the practice of detention and disappearance must aim at the protection of other fundamental rights.

30. The establishment of the Working Group on Arbitrary Detention could profit from the positive experience of the Working Group on Enforced or Involuntary Disappearances, thus opening up the prospect of appropriate coordination between those bodies that would contribute to reducing the scope for the arbitrary State conduct which served as a basis for the practice of the detention and disappearance of persons.

31. The Working Group on Arbitrary Detention, set up in 1991, was intended to protect individual freedom against State abuses, whether emanating from the Executive or from the Judiciary. Moreover, Commission resolution 1991/42 made no distinction according to whether deprivation of freedom originated in the Judiciary, the Executive, the police, the military or the security forces.

32. Countries in which the phenomenon persisted needed to guarantee the right of their citizens to a recourse which would protect them against arbitrary detention. It was not enough for national legislation to establish protective mechanisms for use in such situations if, at the same time, there were serious obstacles to actually applying them, as was the case in Peru, where continuing legislative restrictions affecting the right to a rapid and effective recourse, the lack of autonomy of judicial machinery and the absence of strong political will meant that those responsible for the practice of the detention and disappearance of persons went unpunished.

33. The important role of the non-governmental human rights organizations and particularly the organizations of relatives, should be mentioned in the efforts to curtail the phenomenon of enforced disappearances; however, the growing risk to which they were exposed needed to be addressed. It was to be hoped that the "prompt intervention" procedure recently introduced by the Working Group on Enforced or Involuntary Disappearances to safeguard the integrity and other fundamental rights of persons reporting violations would be consistently effective in helping the organizations and persons threatened.

34. Stress should be laid on Commission resolution 1992/35, calling upon all States that had not yet done so to establish procedures such as habeas corpus and to ensure that their legislation stipulated their non-derogability. None of the legislation of the countries of the Andean region contained such provisions, and that situation tended to render recourses ineffective.

35. The adoption by the General Assembly of the Declaration on the Protection of All Persons from Enforced Disappearances was an important step in that, inter alia, it made it obligatory for States to keep centralized registers of prisoners, identify their official detention centres and define the powers of their authorities in respect of the lawful detention of individuals. The current challenge was to exercise continuous supervision over the actions by the States involved to put such commitments into effect and to implement the recommendations of the Working Group on Enforced or Involuntary Disappearances in order to eliminate impunity and eradicate the practice of the detention and disappearance of persons in all countries.

36. Mr. van WALT (Pax Christi International) associated his organization with the call by the Nobel Peace Laureates for the immediate release of Daw Aung San Suu Kyi.

37. Despite official denials, jails and labour camps in many countries contained hundreds, sometimes thousands of persons detained simply for having criticized the Government or for demonstrating peacefully. He singled out the case of China and Tibet in that connection, challenging as fallacious the claim that there were no political prisoners in those countries. The release of one or two notable prisoners at what the Chinese Government might perceive to be a delicate moment in its international relations must not be allowed to

conceal the fact that hundreds of less-known individuals were serving sentences - sometimes with the added pain of torture or extreme degrading treatment - for their continued support of the democracy movement.

38. East Timor was another place where torture was used to bend the will of those struggling for freedom. In Israel, the prisoner of conscience, Mordechai Vananu, was in an isolation cell, perhaps for 18 years; thousands of Palestinian prisoners were held in conditions judged unacceptable by international standards. Even as he spoke, events were taking an increasingly tragic and critical turn in Bougainville: the Commission should urge that the conflict there be resolved by negotiation rather than by force. The repression of Albanians in Kosovo was being intensified; it could only be hoped that implementation of the resolution just adopted on the situation of human rights in the former Yugoslavia would help to improve matters there.

39. The Commission's concern for, and the valuable work of the various special rapporteurs and working groups on behalf of, persons under detention, subjected to torture, or disappeared were of immense importance, not only as a source of strength to the victims, but also as a means of securing improved conditions for them. That work must continue, despite the assertions of Governments that it was irrelevant to them, since there were no such persons in their countries.

40. Mr. KOVEN (World Press Freedom Committee) welcomed the call made by the Canadian and United States delegations for the appointment of a special rapporteur to hear, investigate and report on violations against freedom of speech and freedom of the press. For years, his organization had been calling for the Commission to make violations against press freedom guarantees a regular feature of its agenda.

41. It had been his organization's view all along that the international standard of free speech and free press already existed, as spelt out in article 19 of the Universal Declaration of Human Rights. To that end, the World Press Freedom Committee with its sister organizations had worked out a Charter for a Free Press enjoining Governments to refrain, inter alia, from censorship, control of news media, restriction of access to means of dissemination, licensing or other limits on the practice of journalism. Those points would better safeguard press freedom than any relativistic approaches, some of which had been adopted as compromises during the cold war and could pose a threat to the very freedoms they purported to protect.

42. His organization was conscious that many of the new democracies were tempted to adopt laws which were still on the books in older democracies but which were only rarely enforced. For example, a law against insulting a Head of State which might seem to have some validity where the sovereign played no direct political role became a dangerous instrument of repression in a country emerging from the nightmare of totalitarianism. Attempts to enact and enforce such statutes, in clear violation of article 19 of the Universal Declaration of Human Rights had been made in Kazakhstan and Slovakia. The appointment of a special rapporteur with a clear mandate to defend the rights of journalists and the press could provide the latter with the support that they sorely needed.

43. Mr. ZUÑIGA PAZ (American Association of Jurists) recalled that at the forty-fourth session of the Sub-Commission, his organization had expressed the view that the mandate of the Special Rapporteurs on the right to freedom of opinion and expression should include a study of the monopoly, at the international level, of the mass media which enabled public opinion to be manipulated in all areas ranging from political and economic issues to consumer habits, thereby undermining the structures of national cultures. A study was needed of the predominant role of the mass media in disseminating ideas in contemporary society and the creation of machinery to prevent its monopolization.

44. The Association was concerned about the situation regarding freedom of the press in Peru and reiterated its request that the Commission should appoint an independent expert to deal with systematic human rights violations in that country.

45. Its request was based on the fact that the Judiciary was no longer independent since the coup d'état of 5 April 1992, when Supreme Court judges appointed by the Government had extended the presidential mandate to three years and replaced 143 judges. It was also based on the fact that the Office of the Public Prosecutor had come totally within the purview of the Executive, that the Court of Constitutional Guarantees had been dissolved and that military jurisdiction had been unconstitutionally extended to trying civilians accused of terrorism. Furthermore, certain laws promulgated following the coup d'état distorted the aim of the administration of justice and made it the tool of a policy aimed at the military and legal repression of subversive terrorism.

46. His organization wished to draw attention to the disproportionate increase in prison sentences, the loss of nationality for Peruvians abroad, the intention to restore the death penalty, the liability of minors under 15 years of age to imprisonment, the obligatory issue of an initiating order in proceedings without the protection of habeas corpus, the summary nature of proceedings before anonymous military judges and the fact that the lawyers were prohibited from defending more than one person.

47. With regard to the independence and protection of lawyers, he recounted his own experience: he had been confidentially warned off a case in which he had applied for a writ of habeas corpus on behalf of a missing student. He had decided to continue the case and had subsequently received a letter bomb which had amputated his left arm. Following the coup d'état, the investigations into the disappearance of the missing person in question and the attack on his own life had been filed.

48. Ms. ALVES PEREIRA (American Association of Jurists) addressed the matter of the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

49. Given that the violations covered by the Convention were in very great measure irremediable, prevention was of considerable significance; the international community acknowledged the need for an additional instrument to promote that end, complementing articles 2, 10 and 11 and balancing with its

lower profile of persuasion and incitement the more repressive and judicially constraining provisions of the Convention itself which - some countries feared - laid them open to intense public scrutiny.

50. The American Association of Jurists noted with particular interest in the draft protocol the commitment by States unconditionally to permit visits to places of detention in order to strengthen the protection of persons held there in accordance with international standards; it approved the functions attributed to the proposed sub-committee and the stress laid on dialogue with States, and it endorsed the provision for confidentiality except when sanctions were called for. It considered as encouraging the fact that the non-judicial mechanisms of the European Convention against Torture, which was founded on a system of visits to places of detention, had proved positive. The Association was not, on the other hand, in favour of a series of regional conventions against torture.

51. To conclude, the Association hoped for the speedy adoption of an optional protocol to the Convention against Torture along the lines proposed, and to that end had submitted a more detailed statement to the Commission in document E/CN.4/1993/NGO/20.

52. Mr. MAHACASSAPA (International Federation for the Protection of the Rights of Ethnic, Religious, Linguistic and Other Minorities) called attention to the desperate circumstances of the Jummas, a peaceful indigenous people of Buddhist, Hindu and Christian persuasion residing in the Chittagong Hill Tracts of Bangladesh. With the official encouragement and connivance of the Government, and under protection from the army and security forces, Bengali settlers had for the past 18 years been steadily forcing the Jummas from their homes and lands, torturing and massacring them in the process.

53. In one of the worst incidents, which had occurred in April 1992 in the village of Logang, more than a thousand men, women and children, almost half the population, had been killed, most of them burnt alive. Many of the bodies had been hidden by the military. Jummas who resisted were being arrested and jailed under the Anti-Terrorist Act passed by the Bangladesh Government in November 1992; the High Court had ruled that many of those arrests were illegal. Negotiations had been launched in an effort to restore peace and stability in the Chittagong Hill Tracts. He appealed to the Commission, to Governments and to non-governmental organizations to do all in their power to influence that process, and help to ensure that any agreement that might be concluded would be reinforced by constitutional or international guarantees.

54. The Federation in whose name he spoke also wished to join in the appeal for urgent action by the Commission on behalf of the hundreds of Buddhists, including many monks and nuns, held in various forms of detention in Tibet.

55. Mr. PERMUY (International Association of Educators for World Peace) introduced himself as President in exile of the Cuban Centre for Human Rights. His organization welcomed the report of the Special Rapporteur on the situation of human rights in Cuba, especially as the lack of cooperation on the part of the Cuban Government had not prevented the Special Rapporteur from describing the most important aspects of the institutionalized violation of human rights and fundamental freedoms in Cuba.

56. Prisons throughout the country continued to house large numbers of political prisoners, and there was evidence of inadequate food, lack of medical care and cruel, inhuman or degrading treatment. Political prisoners were frequently beaten or otherwise ill-treated or put with common criminals who had also ill-treated them.

57. The mass exodus of emigrants from Cuba continued to grow. Since 1991, more than 2,000 persons had left the country each year, although it had been calculated that only one in every three persons actually reached the south of Florida. The number of missing persons in Cuba was increasing and it was suspected that some would-be emigrants were detained when they attempted to flee the country. Their desperate attempts to emigrate were not only due to the poor conditions and lack of prospects in Cuba but also to persecution, discrimination and ideological apartheid and their desire for freedom.

58. Repression took two main forms: rapid action brigades which beat up and detained individuals and violated privacy, even that of churches, and attacks on human rights activists in the form of arbitrary detentions, discriminatory expulsions and physical attacks and threats. Some opposition leaders had been given the choice of leaving that country, giving up their political activities or being sentenced to imprisonment for ordinary offences. Even dissidents who had merely expressed an interest in changes in the political system had been persecuted. The regime's current policy for remaining in power took the form of repressive methods which increased the existing oppression, while regular desertions by officials and representatives of the regime closed the circle of the expression of discontent of a people which had lost confidence in its Government. However, the characteristic feature of totalitarianism constituted by the lack of independence and impartiality of the judiciary and of those lawyers permitted to defend the accused persisted with some honourable exceptions.

59. The Cuban Government's failure to cooperate with the Commission and its efforts to keep the nation in isolation in order to be able to act with greater impunity merited exemplary treatment. Instead of support for the Government, support should be given to the long-suffering people of Cuba. The Cuban crisis was in actual fact the confrontation between a people and a dictator. Given the evidence of human rights violations, the lack of fundamental freedoms in Cuba, a report should be submitted to the Security Council so that it could end the holocaust through which the people of Cuba were living and permit them to achieve freedom and self-determination.

60. Mr. MOCONG (World Alliance of Reformed Churches) drew attention to the torture and ill-treatment inflicted on a daily basis on prisoners - and on political prisoners in particular - in Equatorial Guinea, as described in the report submitted by Mr. Volio Jimenes (E/CN.4/1993/48).

61. That report covered the situation up to 15 December 1992. Since then, the political opposition and protesting students had continued to be subjected to arbitrary detention, ill-treatment and torture by methods which included the infamous falanga, as the speaker himself could testify from personal experience. Indeed, the human rights situation in Equatorial Guinea continued to deteriorate from day to day. The Commission should bring pressure on the

Government to modify its policy of repression and intimidation and to accept the Plan of Action proposed by the Expert in his earlier report (E/CN.4/1992/51). He would urge that the matter be taken up under item 12.

62. Ms. LACOURT (International Federation Terre des Hommes) remarked that arbitrary detention and torture were by no means disappearing from the world: indeed, the latter practice was becoming more and more sophisticated and, one might say, even codified in circles responsible for inflicting it. Governments were often distressingly complaisant; and the observation by the Special Rapporteur of the Commission, in his 1992 report (E/CN.4/1992/17, para. 279), that national security achieved at the expense of respect for human rights could only be a caricature of itself, had lost none of its relevance.

63. She singled out for special attention the situation in Morocco and the occupied territories of Western Sahara. A recent trial, held in camera in Agadir, was believed to have been based on confused and unsubstantiated charges and to have resulted in sentences of imprisonment for 24 Saharans, alleged demonstrators, held in detention and in all likelihood systematically ill-treated and tortured for the previous four months. It might be surmised that they would continue to suffer the same indignities as they served out their sentences.

64. According to reliable evidence collected by Terre des Hommes, some 600 young people of both sexes, including children, who had taken part in the same demonstrations in the autumn of 1992 in various parts of southern Morocco and the Sahara, had been detained since that time and denied visits by their families. Students of Saharan origin, suspected of organizing the disorders, had been harassed or arrested, and their lodgings searched. Terre des Hommes urged that a commission of inquiry be set up without delay and sent to investigate conditions of detention in general as well as alleged instances of torture, and to determine how widespread acts of repression, including arbitrary house arrest, torture and irregular trials, were in the territories in question and the extent to which young Saharans were the victims. The findings of the inquiry should be set before the Commission on Human Rights at its next session. All States Members of the United Nations should be invited to break off their commercial relations with Morocco until that country mended its ways. Moreover, given its record over a period of many years, Morocco should not be entrusted with any special responsibilities at the forthcoming World Conference on Human Rights: to decide otherwise would lay participants open to the charge of complicity with its actions, and jeopardize the credibility of that gathering. She added that the same considerations applied, as far as Terre des Hommes was concerned, to any country which treated human rights in the same fashion.

65. Ms. BRANTLY (International Fellowship of Reconciliation) said that IFR wished to address the related issues of arbitrary detention, hostage-taking and the freedom of expression.

66. The Working Group on Arbitrary Detention had found that, as practised in China, what was euphemistically termed "shelter and investigation" as well as detention for re-education for labour could cause serious violations of other human rights. There were no published rules governing the first of those

processes, which was conducted in virtual secrecy but was believed to affect thousands of people; the second process could serve as a means of preventing exercise of the freedom of expression. Both processes were often carried out in the same camps, with the same type of brutal physical and psychological treatment and under the same harsh living and working conditions. IFR would ask that the mandate of the Special Rapporteur of the Commission on the question of torture be extended to include visits to such places of administrative detention in China, namely labour camps, "shelters" and "public security houses". Such visits should be considered separately, and not under item 10 of the Commission's agenda; and the Special Rapporteur's activity should be supplemented by the activities of the Chairman of the Working Group on Arbitrary Detention and the Special Rapporteur on states of emergency.

67. Mr. LITTMAN (International Fellowship of Reconciliation) remarked on the scant attention generally accorded by the Commission to the issue of hostage-taking, notwithstanding the concern voiced in the Sub-Commission in 1989 at the increased number of incidents where nationals of given States were singled out as hostages in order to bring pressure to bear on those States or on third parties. In August 1990, nearly 2 million foreigners, including some 20,000 Westerners, cynically described as "guests" by Saddam Hussein, had found themselves in that category, despite a declaration made only four months earlier by Colonel Muammar Qaddafi, à-propos of the situation in Lebanon, that Muslims should adhere to the noble Islamic values which affirmed the honour and humanity of man and the non-taking of hostages. Other Islamic leaders had made similar pronouncements.

68. Calling in particular for measures to put an end to the hostage situation in Lebanon, including the return of the remains of hostages known to be dead, he urged the Commission to consider adopting at its current session a resolution strongly condemning the barbarous practice of hostage-taking, particularly for political or ideological reasons.

69. Turning to the issue of the right to freedom of opinion and expression, he reiterated his organization's special preoccupation with the case of Salman Rushdie, in all its ramifications. Those who were committed to the achievement of universal standards for fundamental human rights must make it clear that nothing would be gained through threats and intimidation against those who upheld those rights: the Commission and Sub-Commission had - he submitted - been remiss in failing to address and denounce the ugly fatwa that hung over Rushdie's head.

70. Mr. ZUÑIGA REY (International Immigrants Foundation, Inc.) said that, when describing to the Commission four years previously the ill-treatment he had endured for 19 years as a political prisoner in Cuba, he had reported that violent treatment of political prisoners was not a thing of the past, as claimed by the Cuban authorities, but that it had merely been temporarily halted during the visit to Havana by the Working Group of the Commission. He had also warned the Commission that, unless the United Nations took firm preventive action with the Cuban Government, the situation would further deteriorate.

71. His fears and prophecies had been fulfilled. The Special Rapporteur on Cuba was in possession of voluminous documentation concerning murders,

beatings and cruel treatment in Cuban prisons. He singled out the cases of Luis Villalba, beaten to death on 4 August 1992; of Nicolás González Regueiro, found hanged in his cell after demanding recognition of his status as a political prisoner; and of Barlovar Moré, whose death from a heart attack had been the direct result of extreme physical ill-treatment.

72. Conditions in Cuban prisons were infernal. Political prisoners and prisoners of conscience were compelled to mingle with common criminals, and some had died for lack of food or medical assistance. Men and women alike were kept in solitary confinement in padded cells. Three female prisoners of conscience were at present on hunger strike in protest against the inhuman conditions in which they were kept. Unlike prisoners elsewhere in the world, prisoners in Cuba were denied the right to study, regular visits by their families and the right to receive mail.

73. Psychiatric abuse was a further weapon in the arsenal of the Cuban Department of State Security, and was used against religious as well as political dissidents. The press in southern Florida had recently interviewed one of the most notorious practitioners of psychiatric torture in Cuba, Heriberto Mederos. Dr. David Hernández, a psychiatrist who had recently fled from Cuba to Costa Rica, was ready to testify before the Special Rapporteur on torture concerning psychiatric abuse of political prisoners by the Ministry of the Interior. Shortly before the visit by the United Nations Working Group, the Cuban authorities had appointed civilian psychiatrists to sign the orders committing political prisoners and detainees to psychiatric hospitals, thereby disguising the political objectives behind the committals. The case of Roberto Bahamonde Massot, who had attempted to stand for political power, was particularly noteworthy.

74. He went on to cite the names of a number of victims with whom he was personally acquainted. Other human rights activists whom he named were in imminent danger of detention and further psychiatric abuse.

75. In its statement on agenda item 10, the Chilean delegation had pointed out that one of the most obvious means of preventing the exercise of the right of freedom of information and expression was to concentrate ownership of all the media in the hands of the State. The only country on the American continent where all the media were State-controlled was Cuba. The Cuban people knew only what the authorities wished them to know. They had been informed of the Chernobyl disaster many months after the event. Some months after the shooting down of a Korean Air Lines aircraft by Soviet Mig jets, the incident had been reported as an air crash. Man's landing on the moon had not been reported in the Cuban press. Internal news was subject to even more stringent censorship. No mention was ever made of human rights organizations, protests, failures on the part of the Government, or violent acts by the police or State security forces. No resolution on Cuba adopted by the United Nations had been publicized in the island. Attempts to exercise freedom of expression were regarded as crimes, and were given such names as "enemy propaganda", "incitement to commit a crime", "defamation" and "dissemination of false information".

76. Representatives of Governments had the right to reply to the accusations levelled against them. It would be very much to the point if, instead of harping on the principles of the Revolution, the Government of Cuba replied to the Commission and the special rapporteurs regarding the numerous cases of violations of human rights and crimes referred to in their reports.

77. Mr. AIZAWA (Japan), speaking in exercise of the right of reply, said that he wished to comment on the remarks made by the representative of War Amputations of Canada regarding the claims of ex-prisoners of war and civilian internees during the Second World War.

78. The Government of Japan was of the view that the San Francisco Peace Treaty concluded in 1952 between Japan and the Allied Powers, including Canada, stipulated that the Allied Powers waived the reparations claims and other claims of the Allied Powers and their nationals arising out of any actions taken by Japan and its nationals in the course of the prosecution of the war (art. 14 (b)).

79. The Government of Japan maintained its expressed position on that issue. On the procedural aspect, especially with regard to the 1503 procedure, its position coincided with Sub-Commission on Prevention of Discrimination and Protection of Minorities decision 1991/104, which stated that the 1503 procedure could not be applied as a reparation or relief mechanism in respect of claims of compensation for human rights suffering or other losses which had occurred during the Second World War.

80. The purpose of the United Nations, clearly stated in the preamble to its Charter, was to save succeeding generations from the scourge of war. The United Nations was not the organ for solving problems which had occurred before its time. Furthermore, the mandate given to the Special Rapporteur of the Sub-Commission on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms was to submit conclusions and recommendations in order to develop general principles and guidelines. His delegation thus firmly believed that it was outside the Special Rapporteur's mandate to make recommendations on individual cases of claims for compensation.

81. Ms. FOULDS (United Kingdom), speaking in exercise of the right of reply, said that the United Kingdom Government had noted the statement made the previous day by the Lawyers Committee for Human Rights, and was fully committed to ensuring fair treatment of all detainees in holding centres, and to protecting the rights of all defence lawyers and their clients. The Government had already expressed deep reservations about the Committee's report on human rights and legal defence in Northern Ireland, which it believed to be lacking in balance and excessively dependent on uncorroborated allegations. The United Kingdom Government had commented fully on the report. Those comments were attached as an annex to the report itself.

82. Mr. KHOURY (Syrian Arab Republic) said that the references by Amnesty International to the situation in his country and in other third world countries was illustrative of the continuing selectivity applied by that organization in dealing with situations, and served only to weaken its credibility and to leave it open to charges of lack of objectivity.

83. With regard to the comments made by the International Federation of Human Rights regarding the state of emergency proclaimed in the Syrian Arab Republic, the State security courts, prisoners of conscience and the thousands of persons who had allegedly disappeared, his delegation wished to point out that a state of emergency, in whatever country it was imposed, was an exceptional regime which did not conflict with the spirit and letter of the Constitution. In his own country, the state of emergency had been imposed as a result of the exceptional danger posed by the occupation of part of its territory by Israel, and had enabled the civilian authorities to issue decrees in accordance with the law so as to protect Syrian territory. Procedures under the state of emergency were rarely, and increasingly seldom, invoked, and only in specific cases directly concerning crimes against the security of the State.

84. With regard to the constitution of the State security court, which the representative of that organization regarded as a violation of human rights, his delegation wished to state that those courts and their procedures and sentences did not differ from those of the ordinary courts. The Supreme Court consisted of two chambers, each made up of three judges, one military and two civilian. The military judge was present in order to deal with cases involving military personnel, consistent with the legislation on judicial redress; and the presence of a military judge in no way made those courts military tribunals.

85. As for the alleged violations of human rights and fundamental freedoms in his country, the organization referred to was one that acted illegally, and was part of a prohibited political party engaged in acts of terror and violence and in receipt of financial resources from abroad, the purpose of which was to attack the State, tarnish the country's image, commit crimes against the Head of State and its institutions, and incite citizens to revolt.

86. Regarding the alleged prisoners of conscience, all prisoners were persons accused of offences against citizens and the security of the State, and were sentenced accordingly. Nevertheless, the Presidential pardon had been exercised in favour of a number of persons accused of such crimes.

87. Finally, the figures quoted by the representative of the International Federation of Human Rights were wholly imaginary, and had no basis in reality. For example, the representative had put the number of missing persons at 3,000. Yet in its report contained in document E/CN.4/1993/25, the Working Group on Enforced or Involuntary Disappearances cited only two cases of disappearances in the Syrian Arab Republic. Nor had any evidence of summary executions been noted.

88. Ms. LIU Guoyu (China) said that speakers who had criticized the Chinese judicial system either had no knowledge of that system, or else were politically prejudiced. She wished to clarify a number of points. First, Chinese law clearly established that the main duty of the People's Court was to protect people's physical integrity, democratic rights and other lawful interests, to safeguard the order of society, the property of the State and

collective unity as well as the lawful property of private individuals, to protect the lawful interests of foreign-owned and joint ventures and cooperative enterprises, and to secure a smooth process of reform and an open-door policy.

89. Secondly, trials in the People's Courts were carried out in strict accordance with lawful proceedings. China's institutions and criminal, civil and administrative proceedings set out the basic principles and regulations to which the People's Court strictly adhered in hearing cases of all kinds. All citizens, regardless of nationality, race, sex, profession, social status, religion, educational level, property status and duration of residence, were equal before the law. In dealing with cases, the courts made decisions in accordance with the facts and evidence, as well as with the law. In all proceedings, stress was placed on the evidence and the investigation, and no credence was ever given to statements extracted under duress.

90. Thirdly, the People's Courts took decisions independently and in accordance with the law, and were never influenced by any administrative institutions, social organizations or individuals. There was thus no justification for impugning the independence of the Chinese judiciary.

91. The facts demonstrated that the People's Courts dealt lawfully and correctly with all cases, effectively protected the lawful interests of citizens, and safeguarded the stability of the State. Furthermore, they enjoyed the support of the vast majority of citizens in all walks of society.

92. Finally, she wished to stress that Chinese law expressly prohibited the infliction of torture on criminals. In August 1992 the Chinese Government had issued a white paper on the reform of criminals in China, from which it could be seen that many criminals had been successfully reformed, and that, at 6 to 8 per cent, the rate of recidivism was one of the lowest in the world. It also demonstrated that the Chinese Government had always treated criminals in a humane fashion.

93. Ms. SPASIC (Observer for the Federal Republic of Yugoslavia), speaking in exercise of the right of reply, said that the representative of Croatia had again repeated totally unfounded allegations regarding alleged aggression by the Federal Republic of Yugoslavia against Croatia. Her delegation wished to stress that the competent international forums had clearly named the aggressor: in its resolutions 787 (1992) and 802 (1993) the Security Council had condemned Croatia for engaging its regular military forces in Bosnia and Herzegovina, as well as for its aggression in United Nations-protected areas. Croatia, however, was disregarding the Security Council resolutions and was pursuing its aggression.

94. Her delegation firmly rejected the accusation that the Federal Republic of Yugoslavia was responsible for the civil war in Croatia, a war which had actually broken out after the Croatian forces had attacked the territory mainly inhabited by Serbs. The persons who had disappeared referred to by the representative of Croatia were not in the territory of the Federal Republic of Yugoslavia, as could be confirmed by the competent international humanitarian organizations. In presenting false figures regarding the number of

disappeared persons and attempting to lay the blame at the door of the Federal Republic of Yugoslavia, the Croatian Government was prepared to malign even such an eminent humanitarian organization as the International Committee of the Red Cross, in order to avoid having to shoulder responsibility in the eyes of its own people. The Federal Republic of Yugoslavia had been, and would continue to be, open to all bona fide initiatives aimed at seeking a peaceful solution to the conflict and alleviating its tragic consequences for the peoples of the area.

The meeting rose at 10 p.m.